

CONSTANTINE | CANNON

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NEW YORK | WASHINGTON

April 8, 2009

**VIA HAND DELIVERY AND ECF**

The Honorable John Gleeson  
United States District Court Judge  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: Visa Check/MasterMoney Antitrust Litigation, (CV-96-5238)(JG)(JO)**

Dear Judge Gleeson:

I write on behalf of Lead Counsel to respectfully respond to the Court's April 7, 2009 Order. At the outset, an apology is owed to the Court for disclosing the potential discount range to the merchants that attended the conference call organized by the Food Marketing Institute ("FMI") without first seeking the Court's approval. While in retrospect we regret the disclosure, I want to assure the Court that the decision I made to disclose, and my disclosure to the FMI callers, was done solely to avoid objections and appeals that could ultimately delay and potentially hamper a securitization that Lead Counsel strongly believes is in the best interests of the class. Throughout this litigation, Lead Counsel has consistently done its utmost to represent the interests of all class members and we shall continue to do so through both securitizations until the Plan of Allocation is completed.

With respect to the Court's Order that Lead Counsel show cause why we cannot treat all class members fairly with regard to the potential discount range without publicly disclosing it, Lead Counsel respectfully recommends the following alternative for the Court's consideration. Since Lead Counsel's motion for final approval of the securitization was posted on the case website and Lead Counsel's website on March 6, 2009, only a handful of merchants have requested the discount range or objected on the basis that they could not make an informed decision without that information. Of that universe, only one merchant, Continental Garden Restaurant, has not received the information that was available to the merchants on the FMI call on a confidential basis. As an alternative to publicly disclosing the information to all approved claimants (*i.e.*, Class Members who are eligible to receive payments of the residue under the Plan of Allocation), Lead Counsel respectfully recommends that the Court order the disclosure of the

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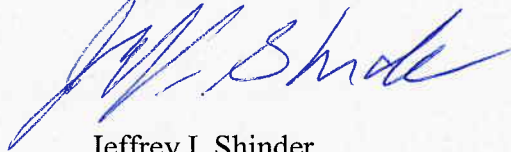
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potential discount range to any approved claimant that requests it on or before April 13, 2009, the deadline for the filing of objections. Lead Counsel will request that any such merchant, including the merchants that participated in the FMI call, shall keep the potential discount range confidential. To notify approved claimants of this modification, Lead Counsel shall post the Court's Order on the case website and Lead Counsel's website. Under this approach, all approved claimants that believe they need access to the potential discount range to make an informed decision regarding the securitization shall receive the information on a confidential basis, and thus, they will be treated equally and fairly.

Respectfully submitted,



Jeffrey I. Shinder

cc: Robin Wilcox, Esq. (*via electronic mail*)  
*Special Master*

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